



Real Property Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending December 14, 2012

By the Carlton Fields Real Property Litigation Practice Group

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I. FLORIDA STATE CASES – BRIAN VAVRA

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- **Injunction: court did not abuse discretion in denying temporary injunction seeking to prevent defendant from exercising rights in property conveyed to it by quit-claim deed where plaintiff failed to demonstrate likelihood of irreparable harm** – [State Invest. Holding, Inc. v. Merrick P'ship, LLC](#), No. 3D11-2369 (Fla. 3d DCA Dec. 12, 2012) (affirming non-final order denying entry of temporary injunction)
- **Foreclosure: mortgagors' motion to vacate foreclosure judgment properly denied where (i) mortgagors' failed to present colorable claim that plaintiff lacked standing, particularly where original note and mortgage filed with the court, and (ii) mortgagor who did not receive notice of the final hearing had been defaulted and was not a party to the note** – [Rooney v. Wells Fargo Bank, N.A.](#), No. 4D11-4724 (Fla. 4th DCA Dec. 12, 2012) (affirming final judgment of foreclosure)
- **Arbitration: arbitration clause in shared common expense agreement between adjoining HOAs applied to dispute regarding alleged overcharges, and HOA who first filed a demand in arbitration and later filed a motion to compel arbitration in adversary's subsequent court action to enjoin arbitration did not waive its right to arbitrate by filing a limited request for production in that action because HOA did nothing inconsistent with its right to arbitrate and, in fact, arbitration was pending when the limited discovery request was made** – [Ibis Lakes Homeowners Assoc., Inc. v. Ibis Isle Homeowners Assoc., Inc.](#), No. 4D12-1273 (Fla. 4th DCA Dec. 12, 2012) (affirming non-final order granting motion to compel arbitration)
- **Foreclosure: bank's failure to file evidence of mortgage assignment or lost note affidavit until day of summary judgment hearing violated Fla. R. Civ. P. 1.510(c), which requires that all supporting evidence be served at least 20 days prior to the time fixed for the hearing** –

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II. 11TH CIRCUIT CASES – JIN LIU

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III. TITLE INSURANCE CASES - CHRIS SMART

- **Duty to Cure Title:** insurer who investigates and then cures title through quiet title action in a prompt and reasonable manner does not breach title policy – [Granelli v. Chicago Title Ins. Co.](#), Case No. 10-2582 (D.N.J. Dec. 6, 2012) (granting defendant's motion for summary judgment where insurer cured title 2 years after claim was made)
- **Title Insurance:** title insurance is not a guaranty that there are no defects in title; instead, policies protect against title defects not discoverable in the public records or resulting from errors or mistakes in the search or examination– [Granelli v. Chicago Title Ins. Co.](#), Case No. 10-2582 (D.N.J. Dec. 6, 2012) (granting defendant's motion for summary judgment where insurer cured title 2 years after claim was made)
- **Measure of Damages:** policy provisions limit damages to the lesser of stated policy limits or diminution in value and insured is not entitled to lost profits or consequential damages beyond limits of policy – [Mattson Ridge, LLC v. Clear Rock Title, LLP](#), Case No. A10-1483 (Minn. Dec. 12, 2012)
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- **Class Action:** insurer does not have absolute duty to charge class members refinance rate and such determination requires transaction-specific inquiry – [Loef v. First Am. Title Ins. Co.](#), Caws No. 2:08-cv-311 (D. Me. Dec. 10, 2012) (order decertifying class)

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